

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT BYRON LEE,

Defendant-Appellant..

D.C. No. CR03-5139 RBL
Appeals No. 04-30185

PROCEDURAL ORDER

This case comes before the court for consideration of re-sentencing pursuant to the remand of the Ninth Circuit Court of Appeals and United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005). A clarifying procedural order should now be entered.

In accord with Ameline, each party may file a pleading addressing the sole question of whether the sentence imposed would have been materially different had the district court known that the sentencing guidelines were only advisory. The court is mindful that the burden of proof is on the defendant to prove the positive of the stated proposition, and the court assumes that the burden is by a preponderance of the evidence. Counsel should be mindful that the question at this point is not whether the defendant should have received a different sentence. Those questions may be addressed if a re-sentencing is ordered.

On review of the aforementioned pleadings, the pre-sentence investigations, and transcripts of the sentencing, (if available), the court will either grant re-sentencing, deny re-sentencing, or order oral argument or an evidentiary hearing on whether there should be a re-sentencing.

Such pleadings should be filed not later than October 27, 2005.

Dated this 5th day of October, 2005.

ORDER
Page - 2